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ROBERT MILLER

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ROBERT MILLER,

Plaintiff,

v.

FEBA CAPITAL, LLC, and
DOES 1 through 10 inclusive,

Defendants.

Case No. _____

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR
COPYRIGHT INFRINGEMENT**

DEMAND FOR JURY TRIAL

Plaintiff, ROBERT MILLER (“Miller” or “Plaintiff”), for his complaint against Defendant FEBA CAPITAL, LLC alleges as follows:

JURISDICTION AND VENUE

1. This is a civil action seeking damages and injunctive relief for copyright infringement under the Copyright Act of the United States, 17 U.S.C. § 101 *et seq.*

2. This Court has subject matter jurisdiction over Plaintiff’s claims for

copyright infringement pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant maintains contacts within the state of New York, and has committed the tortious act of infringement causing injury to a person within the state of New York. *See N.Y.C.P.L.R.* § 302 (2003).

4. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and 1400(a) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred. Alternatively, venue is also proper pursuant to 28 U.S.C. § 1400(b) because the Defendant resides and has a regular and established place of business in this judicial district.

PARTIES

5. Robert Miller (“Plaintiff”) is an individual residing in the State of New York and is a professional photographer by trade.

6. FEBA CAPITAL, LLC (“Defendant”) is a limited liability company residing in the State of Massachusetts with a principal state of business at: 400 TradeCenter, S-3900, Wodburn, MA 01801.

7. Defendant is a private equity investment company focusing on “digital media, consumer Internet, and building brands,” and is a subsidiary of Triares, Inc., an Internet media company. *See* <https://www.febacapital.com/companies>.

8. On information and belief, Defendant owns the Brazilian Times.com aka the Brazilian Times Newspaper (“Brazilian Times”). *See id.* Defendant has the right and ability to supervise the Brazilian Times and maintains a financial interest therein. *See* <https://www.febacapital.com/> (“The firm provides businesses and entrepreneurs with not only capital, but also access to expertise and insights on design, technology, brand building, business development and marketing.”).

9. The Brazilian Times is a news media outlet targeting the Brazilian community in the United States. In addition to the online webpage, www.braziliantimes.com (“Website”), the Brazilian Times also circulates a printed magazine and newspaper with specific versions for Florida, Massachusetts, and New York. The magazines and newspapers cover news as well as stories about notable Brazilians throughout the country, and include advertisements for services from cities such as Boston and New York. The webpage also includes a tab for “Services” where users can post “Wall Classifieds” or public messages for jobs and services needed.

10. On information and belief, Defendant, as an investor, receives monetary gain when the Brazilian Times posts content to its website in order to attract user traffic and drive advertising revenue.

11. Plaintiff is unaware of the true names and capacities of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, sues

such Defendants under such fictitious names. Plaintiff is informed and believes and on that basis alleges that such fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately caused by the conduct of said Defendants. Plaintiff will seek to amend the complaint when the names and capacities of such fictitiously named Defendants are ascertained. As alleged herein, "Defendant" shall mean all named Defendants and all fictitiously named Defendants.

12. For the purposes of this Complaint, unless otherwise indicated, "Defendant" includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogates, representatives and, insurers of Defendants named in this caption.

FACTUAL ALLEGATIONS

13. Plaintiff Robert Miller is a professional photographer by trade. Miller has licensed or sold his photographs to dozens of major media outlets such as The New York Post, The New York Times, Rolling Stone Magazine, South China Morning Post, Agence France-Presse, Newsday, New York Daily News, Newsweek Magazine, People Magazine, The Associated Press, and USA Today.

14. Miller is the sole author and exclusive rights holder to a photograph of DACA protestors being arrested by the police (the "Image"). A true and correct copy of the original Image is attached hereto as Exhibit A.

15. Miller registered the Image with the United States Copyright Office under registration number VA 2-068-752.

16. Miller originally licensed the Image to the New York Post (“Post”). On September 5, 2017, the Post ran an article on its website titled *DACA supporters arrested for shutting down Fifth Avenue* (“Post Article”), which featured Miller’s Image. A true and correct copy of the original article is attached hereto as Exhibit B.

17. Miller’s Image featured in the Post Article included a credit below the bottom left corner crediting the Image to Miller. *See* Exhibit B.

18. On or about December 8, 2017, Miller discovered that Defendant had used the Image in a Portuguese-language Brazilian Times article entitled *Vereador de NYC e preso em protesto pro-imigrante* (the “Infringing Article”), with the photo credit removed from the Website. A true and correct screenshot of the Infringing Article featuring Miller’s Image is attached hereto as Exhibit C.

19. On information and belief, Defendant made an unauthorized copy of Miller’s Image taken from the Post Article, and uploaded it to the server for Defendant’s Website.

20. Miller never authorized Defendant to use the Image in any manner.

21. On information and belief, Defendant knew that it did not have permission to use the Image on Defendant’s Website and willfully infringed

Miller's Image.

22. On information and belief, Defendant willfully removed Miller's photo attribution because Defendant knew it did not have permission to use the Image on Defendant's Website.

**FIRST CAUSE OF ACTION
COPYRIGHT INFRINGEMENT
17 U.S.C. § 101 *et seq***

23. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

24. Plaintiff did not consent to, authorize, permit, or allow in any manner the said use of Plaintiff's unique and original Image.

25. Plaintiff is informed and believes and thereon alleges that the Defendant willfully infringed upon Plaintiff's copyrighted Image in violation of Title 17 of the U.S. Code, in that it used, published, communicated, posted, publicized, and otherwise held out to the public for commercial benefit, the original and unique Image of the Plaintiff without Plaintiff's consent or authority, by using it in the Infringing Article on Defendant's Website.

26. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to any actual damages pursuant to 17 U.S.C. §504(b), or statutory damages in an amount up to \$150,000.00 pursuant to 17 U.S.C. § 504(c).

27. As a result of the Defendant's violations of Title 17 of the U.S. Code,

the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs pursuant to 17 U.S.C § 505 from Defendant.

28. Plaintiff is also entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17 U.S.C. § 502.

**SECOND CAUSE OF ACTION
FALSIFICATION, REMOVAL AND ALTERATION OF COPYRIGHT
MANAGEMENT INFORMATION
17 U.S.C. § 1202**

29. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

30. On information and belief, Defendant knew that Plaintiff created the Image because, *inter alia*, the source of the Image, i.e. the Post Article, specifically attributed the Image to Plaintiff.

31. Defendant intentionally falsified copyright management information related to the Image with the intent to induce, enable, facilitate, or conceal an infringement of Plaintiff's rights under the Copyright Act. Specifically, Defendant purposefully failed to credit Plaintiff in order to mislead the public into believing that Defendant either owned the Image or had legitimately licensed it for use in the Infringing Article.

32. Defendant's conduct constitutes a violation of 17 U.S.C. § 1202(a), and 1202(b).

33. Defendant's falsification, removal and/or alteration of that copyright

management information was done without Plaintiff's knowledge or authorization.

34. Defendant's falsification of said copyright management information was done by Defendant intentionally, knowingly, and with the intent to induce, enable, facilitate, or conceal Defendant's infringement of Plaintiff's copyright in the Image. Defendant also knew, or had reason to know, that such removal and/or alteration of copyright management information would induce, enable, facilitate, or conceal Defendant's infringement of Plaintiff's copyright in the Image.

35. Plaintiff has sustained significant injury and monetary damages as a result of Defendant's wrongful acts as hereinabove alleged, and as a result of being involuntarily associated with Defendant in an amount to be proven.

36. In the alternative, Plaintiff may elect to recover statutory damages pursuant to 17 U.S.C. § 1203(c)(3) in a sum of not more than \$25,000 from Defendant for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- For statutory damages against Defendant in an amount up to \$150,000.00 for each infringement pursuant to 17 U.S.C. § 504(c);
- For statutory damages against Defendant pursuant to 17 U.S.C. § 1203(c)(3) in a sum of not more than \$25,000 for each violation

of 17 U.S.C. § 1202;

- For general and special damages against Defendant according to proof together with interest thereon at the maximum legal rate;
- For costs of litigation and reasonable attorney's fees against Defendant pursuant to 17 U.S.C. § 505;
- For an injunction preventing Defendant from further infringement of all copyrighted works of the Plaintiff pursuant to 17 U.S.C. § 502; and
- For any other relief the Court deems just and proper.

Dated: July 31, 2018

Respectfully submitted,

/s/ Rayminh L. Ngo

Rayminh L. Ngo, Esq.

N.Y. Bar #RN4834

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Counsel for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff, Robert Miller, hereby demands a trial by jury in the above matter.

Dated: July 31, 2018

Respectfully submitted,

/s/ Rayminh L. Ngo

Rayminh L. Ngo, Esq.

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Counsel for Plaintiff

Exhibit “A”



Exhibit “B”

NEWS

DACA supporters arrested for shutting down Fifth Avenue

By Daniel Prendergast, Priscilla DeGregory and Yoav Gonen

September 5, 2017 | 1:38pm | Updated

Thirty-four people — including a handful of “dreamers” — were arrested Tuesday for forming a human chain and shutting down Fifth Avenue near Trump Tower following the announcement of the end of the Deferred Action for Childhood Arrivals program.

A dozen protesters were first busted around noon for staging a sit-in outside Trump Tower at Fifth Avenue and W. 57th St. **shortly after Attorney General Jeff Sessions “rescinded” DACA**, which granted amnesty to “dreamers” who were brought to the US as children.

Another group of 22 were arrested for also blocking traffic, police said.

“They’re all being charged with disorderly conduct and various VTL [vehicle and traffic law] violations,” said NYPD Chief of Patrol Terence Monahan at a press conference.

Nine of those collared are DACA recipients and the three others were “allies,” **according to Movimiento Cosecha**, which organized the rally.

Monahan said the DACA recipients who were arrested won’t be fingerprinted as long as they cooperate with police.

“They’ll be given a special desk appearance ticket,” said Monahan. “Any individual who refuses to give pedigree ... will be fingerprinted.”

More than 800,000 illegal immigrants are currently protected from deportation under DACA, which grants two-year work visas to young people who were under the age of 16 when they arrived in the US.

“We are angry for all the young undocumented immigrants that haven’t turned 16 yet and are waiting to apply for DACA. We are angry, for all the DACA parents that could lose the job that supported their family. We are angry, for all the plans that DACA recipients had that now seem impossible,” said Thais Marques, a spokesperson for Movimiento Cosecha. “But we are also strong; and no politician — not Trump, not [Texas Attorney General Ken] Paxton — can take that away from us. Our strength and resilience have never depended on a work permit.”

Traffic came to a halt at 57th and Fifth around 1:45 p.m. when more than 100 protesters crowded the busy intersection, chanting, “Sin DACA, sin miedo” or “Without DACA, without fear” and “The people united will never be divided.”

“Even without DACA, we aren’t going to be scared,” said Carlos Alonso, 22, who attends Lehman College in The Bronx. “My sister is one of the people who got arrested in the first wave of civil disobedience.”

“It wasn’t the best feeling, something you never want to see your sister get arrested,” he added. It’s foreshadowing in case ICE comes to our door and takes my sister and my parents.”

At least a dozen more people were arrested, as police shouted on a loop, “This is the New York City Police Department. You are unlawfully obstructing pedestrian traffic. You are ordered to disperse now. If you refuse to disperse, you will be placed under arrest.”

A similar protest is scheduled for 5:30 p.m. at Foley Square in Lower Manhattan.

Additional reporting by Kevin Sheehan



Robert Miller

FILED UNDER DACA, DONALD TRUMP, PROTESTS, TRUMP TOWER

Recommended by

Exhibit “C”



Publicado em 10/08/2017 às 11:02am

Vereador de NYC é preso em protesto pró-imigrante

O vereador pela cidade de New York, Yadanis, Rodrigues, foi preso na noite de terça-feira (05).

- SELECIONE**
- 1 [Globe notícias](#)
 - 2 [Energia elétrica e serviços públicos](#)
 - 3 [Grupos e massas](#)
 - 4 [Jogos on-line](#)



De gravação, vereador fica algemado entre os policiais.

- SELECIONE**
- 1 [Gravidez e maternidade](#)
 - 2 [Líderes de torcida](#)

O vereador pela cidade de New York, Yadanis, Rodrigues, foi preso na noite de terça-feira (05) juntamente com outras pessoas durante um protesto, em Lower Manhattan, em defesa do DACA, programa que protege da deportação quase um milhão de jovens imigrantes.

O legislador local, que seria o próximo palestrante, estava entre as milhares de pessoas que se reuniram na Foley Square para protestar contra a decisão do presidente Donald Trump em anunciar o fim do programa Deferred Action for Childhood Arrivals (DACA).

Mais tarde, Rodrigues (D-Manhattan) escreveu em seu Twitter sobre ser algemado e os motivos pelos quais estava lutando. "Só fui preso por lutar pelos nossos irmãos e irmãs indocumentados, próximo à Foley Sq.", disse. "Nós ficamos unidos com eles pela busca por justiça. Esta é uma desobediência civil contra as leis e políticas injustas que destroem famílias e separam pais de seus filhos, expulsando os conhecidos como 'dreamers' do único país que eles conhecem", continuou.



Manifestantes são algemados durante protesto na Foley Square.

De acordo com o vereador, o ódio e as políticas xenófobas que emanam de Washington são inaceitáveis e ele continuará lutando a favor dos seus "colegas imigrantes".

Rodriguez, de origem dominicana, caminhava no Park Row, bloqueando o trânsito e cantando com os manifestantes quando foi levado preso.

O vereador tem vários registros de ser preso em outros protestos.

Fonte: Redação - Brazilian Times



RECOMENDADOS PARA VOCÊ



ONU: América Latina evitará mortes com carros elétricos

WORLD NEWS 6:00PM EST



Bombeiros derrubam parede de casa para socorrer mulher de 490 quilos na Argentina

WORLD NEWS 3:00PM EST



Governo Trump volta a liberar importação de troféus de caça de elefantes nos EUA

WORLD NEWS 1:00PM EST



Menina de três anos sobrevive à queda de avião na Rússia

WORLD NEWS 9:00AM EST



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